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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,641	08/26/2003	Nikki Casstevens	PGI6044P0991US	3897

32116 7590 01/25/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 W. MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661

EXAMINER
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MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/648,641	<b>Applicant(s)</b> CASSTEVENS ET AL.	
	<b>Examiner</b> Matthew D. Matzek	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/26/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. The amendment dated 11/21/2005 has been fully considered and entered into the Record. Claims 16 and 17 have been withdrawn and claims 1-15 and 18-21 remain active. The amended claims contain no new matter. The previously applied rejections under 35 U.S.C. § 112 2<sup>nd</sup> paragraph have been withdrawn to either cancellation or amendment. The double patenting rejection in view of U.S. Patent 6,675,429 has been withdrawn due to the Terminal Disclaimer submitted 11/21/2005. The rejection of claims 1-2, 7-9, 11-12, 15-18 and 20-21 as being obvious over Curtis (US PG Pub 2003/0104745) in view of Fereshtehkhou et al. has been withdrawn under 35 U.S.C. 103(c) as both the instant application and Curtis are commonly owned. The rejection claims 1-21 under 35 U.S.C. 103(a) as unpatentable over Gilmore et al. (US 5,369,858) in view of Fereshtehkhou et al. (PG Pub 2001/0055926) has been withdrawn as Gilmore et al. is directed to a nonwoven fabric without fibrous projections.

***Double Patenting***

2. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/206,271 ('271) in view of Fereshtehkhou et al. (US PG Pub. 2001/0055926) as substantially set forth in the Office Action dated 6/17/2005.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Carter et al. (US 6,675,429) as substantially set forth in the Office Action dated 6/17/2005.

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4. Claims 1-12 and 15-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Fereshtekhou et al. (US PG Pub 2001/0055926) as substantially set forth in the Office Action dated 6/17/2005.

***Claim Rejections - 35 USC § 103***

5. Claims 1-21 are rejected under 35 U.S.C. 103(a) as unpatentable over Gilmore et al. (US 5,369,858) in view of Fereshtekhou et al. (PG Pub 2001/0055926) as substantially set forth in the Office Action dated 6/17/2005.

***Response to Arguments***

6. Applicant's arguments filed 11/21/2005 have been fully considered but they are not persuasive.

7. Applicant argues that Carter et al. (US 6,675,429) does not disclose the formation of a three-dimensional image comprising fibrous surface projections, extending from a fibrous support plane, where in the fibrous surface projections are at least 25% of the thickness of the overall support plane. Applicant is directed to col. 5 line 66 –col. 6, line 19 which explains how the three-dimensional image comprising surface projections is transferred to the nonwoven fabric. Applicant is directed to Fig. 1 of the applied patent, which demonstrates the production process for the article of Carter et al. and is also the figure provided by Applicant to create the instantly claimed article. Examiner has used the figures provided by Carter et al. for the teaching of having surface projections of at least 25% of the thickness of the overall support plane. For example in Figure 11 the upper plane thickness is 0.24” and the lower plane thickness is 0.14”. The lower plane thickness serves the as the fibrous support layer and the upper plane thickness

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serves fibrous surface projections extending from the fibrous support plane. The projection is the difference is the heights of the two planes or 0.10".

$$\frac{0.10}{0.14} * 100\% = 71.4\%$$

Therefore in the disclosure of Carter et al. anticipates the instantly claimed article.

8. Applicant argues that Fereshtekhou et al. do not teach the creation of a dimensionally imaged nonwoven fabric by use of a three-dimensional image transfer device and that the forming structure used by Fereshtekhou et al. does not impart three-dimensionality to the created article. Applicant is directed to Figures 4-10, which clearly show that the applied article possess three-dimensionality. With regards to the argument that the Fereshtekhou et al. does not teach the same process as applicant to create the applied article The presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292.

9. Applicant argues that Fereshtekhou et al. do not teach the instantly claimed wave-like surface projections. Applicant is directed to Figures 5-8 and Figure 10, in particular, as the applied invention clearly possesses wave-like surface projections.

10. Applicant argues that Fereshtekhou et al. do not teach the instantly claimed fibrous projections of at least 25% of the thickness of the overall support plane. In Fereshtekhou et al. the continuous, high basis weight regions serve as the fibrous support plane. From the support

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plane projects a plurality of mutually discrete (discontinuous) regions of relatively low basis weight, which are circumscribed by the areas of high basis weight [0008]. The caliper difference disclosed in [0060] for the discontinuous regions serves as the height difference between the two planes. This means that the projections are at least 25% of the thickness of the overall support plane.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

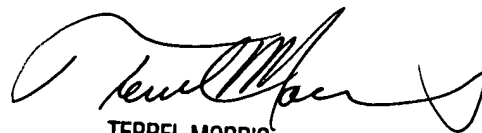
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

*MDM*

  
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SUPERVISORY PATENT EXAMINER  
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